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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 373rd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 30 April 1999, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.373/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Initial report of The former Yugoslav Republic of Macedonia (continued) (CAT/C/28/Add.4)

Conclusions and recommendations of the Committee (CAT/C/XXII/Misc.9)

1. At the invitation of the Chairman, Ms. Stefanovska-Sekovska (The former Yugoslav Republic of Macedonia) took a place at the Committee table.

2. Mr. YAKOVLEV (Country Rapporteur) read out the Committee's conclusions and recommendations on the initial report of The former Yugoslav Republic of Macedonia:

"1. The Committee considered the initial report of The former Yugoslav Republic of Macedonia (CAT/C/28/Add.4) at its 366th, 369th and 373rd meetings held on 27, 28 and 30 April 1999 (CAT/C/SR.366, 369 and 373) and adopted the following conclusions and recommendations:

A. Introduction

2. The former Yugoslav Republic of Macedonia, as a successor State, recognized the obligations of the former Yugoslav Federation and on 12 December 1994 became a State party to the Convention. Accordingly, The former Yugoslav Republic of Macedonia continues to recognize the competence of the Committee against Torture with regard to articles 20, 21 and 22 of the Convention.

3. The Committee was grateful to the State party for the size and quality of its delegation, which contributed in large measure to the fruitful dialogue developed during the consideration of the report.

4. The submission of the initial report of The former Yugoslav Republic of Macedonia was delayed for reasons that were largely outside the control of the State party. The report generally is in conformity with the guidelines of the Committee for the preparation of State party reports.

B. Positive aspects

5. The Committee considers as positive aspects the following:

(a) Article 11 of the Constitution of The former Yugoslav Republic of Macedonia provides that the human right to physical and moral dignity is irrevocable and that any form of torture, or inhuman or humiliating conduct or punishment, is prohibited;

(b) It is very important that the Criminal Code defines as a crime the act of a public official who, while performing his duty, applies force, threats or some other forbidden method of extorting a confession;

(c) The establishment of a State Commission for the supervision of penal and correctional institutions;

(d) The participation of public officials in seminars on the prohibition of abuse and torture, organized by the Council of Ministers and the Council of Europe;

(e) The evident willingness of the State party to implement the provisions of the Convention;

(f) The commitment of The former Yugoslav Republic of Macedonia to respecting the principles and norms contained in the Convention by including extensive training of police and medical personnel in its system of education and re-education. Of particular note is Macedonia's incorporation of the norms reinforcing the prohibition of torture into its primary and secondary school curricula.

C. Factors and difficulties impeding the application of the provisions of the Convention

6. The Committee recognizes that the current situation in The former Yugoslav Republic of Macedonia puts a considerable burden on the Government but should not prevent the Government from making all efforts to fully implement the provisions of the Convention.

D. Subjects of concern

7. The absence of a specific crime of torture as defined in the Convention.

8. The ambiguity of the provisions in the Criminal Code with regard to elements and penalty. This leads to confusion as to the way in which article 2, paragraph 3, and article 4 of the Convention are implemented.

E. Recommendations

9. The definition of torture as contained in the Convention and torture as a defined crime should be incorporated into the Criminal Code of The former Yugoslav Republic of Macedonia with appropriate penalties attached to it.

10. The State party is urged to investigate complaints of maltreatment by government officials, particularly those that relate to ethnic minorities. The investigations should be prompt and impartial and those officials who may be responsible for such maltreatment should be prosecuted.

11. The former Yugoslav Republic of Macedonia, at its borders, should fully comply with its obligations under article 3 of the Convention even in the present situation of a massive influx of refugees from Kosovo.

12. The Committee would like to know, in particular, from the State party what is the specific legal source providing that the justification of superior orders is not applicable to the crime of torture."

3. The CHAIRMAN drew attention to an additional table submitted by the delegation providing statistics of persons accused of and sentenced for criminal acts with elements of torture or inhuman and humiliating acts.

4. The delegation of The former Yugoslav Republic of Macedonia withdrew.

The meeting was suspended at 3.15 p.m. and resumed at 3.30 p.m.

Initial report of Venezuela (continued) (CAT/C/16/Add.8)

5. At the invitation of the Chairman, the members of the delegation of Venezuela took places at the Committee table.

6. The CHAIRMAN invited the delegation of Venezuela to respond to the questions that the Committee had put to it at its 354th meeting.

7. Mr. SIMÓN JIMÉNEZ (Venezuela) said that the Government of Venezuela had changed as a result of the general elections held in December 1998. Moreover, in a referendum held on 25 April 1999, a majority of the people of Venezuela had approved the establishment of a constituent assembly to draft a new constitution during the six-month period from July to December 1999. All international treaties would continue to have constitutional status under the new constitution and would be self-executing. The role of the Public Prosecutor in the Attorney-General's Office, the official responsible for ensuring respect for the human rights and fundamental freedoms guaranteed by Venezuelan legislation, was being reviewed. The institutional protection of human rights would also be strengthened by the creation of an office of ombudsman. The new constitution would retain the provisions of articles 59 and 60 of the 1961 Constitution, which guaranteed the physical integrity of citizens and prohibited procedures that caused physical and moral suffering. He agreed with the Committee, however, that the reform of the Constitution, the Criminal Code and the Code of Criminal Procedure was just a first step towards ensuring full respect for human rights. The new administration was aware of the need to promote the practical implementation of international instruments through preventive and educational measures. The tradition of authoritarianism in Venezuela and Latin America as a whole had influenced the behaviour of the police and security forces, but the human rights approach that had prevailed since the 1980s was gradually bearing fruit.

8. It was hoped that the bill concerning the prevention and punishment of torture and other cruel, inhuman or degrading treatment or punishment, which was currently before Congress, would be adopted as soon as possible and become an integral part of domestic legislation. The bill prohibited the expulsion, return or extradition of a person to another State where there were substantial grounds for believing that he would be subjected to torture. With

regard to the request for extradition of Ms. Cecilia Rosana Núñez Chipana, a Peruvian citizen, the Supreme Court had decided that all the necessary procedural steps had been taken and that extradition could proceed once it had been established that the person to be extradited would not be subject to the death penalty or life imprisonment in the requesting State and would be treated in accordance with the provisions of international human rights treaties, in particular the Convention. Peru was a State party to the Convention and had provided Venezuela with the necessary guarantees regarding its treatment of the person to be extradited. The Venezuelan Minister for Foreign Affairs and the Ambassador to Peru had visited the prisoner and requested both the former Peruvian Minister of Justice and the incumbent Peruvian Minister for Foreign Affairs to take steps to improve her conditions of detention.

9. The Committee had expressed concern about the continued existence in the Venezuelan legal system of the defence of due obedience, especially in the Military Criminal Code. The new Criminal Code and Code of Criminal Procedure would substantially amend the provisions in question. Moreover, certain provisions of the Code of Military Justice were inconsistent with the Constitution and hence inapplicable.

10. Considerable progress had been made in handling allegations of human rights violations by the armed forces. For example, in October 1997 a Human Rights and International Humanitarian Law Department had been established at the Ministry of Defence to investigate such allegations and develop a human rights policy to be pursued by the armed forces. The President, a former military officer, was determined that the security forces should comply strictly with their obligations under the Constitution and other legislation and receive training in the protection and promotion of human rights. He had prohibited the National Guard from acting in any circumstances in a manner that might encroach on the rights of citizens. The Bolivar 2000 Plan required the armed forces to become involved in civilian projects such as the building and refurbishing of schools and hospitals. It was hoped thereby to improve the relationship between citizens and the armed forces and to change existing attitudes on both sides.

11. The new Code of Criminal Procedure had been approved by Congress and had entailed amendments to legislation concerning, for example, the Office of the Attorney-General, the Criminal Investigation Service, the Judicature Council and the penitentiary system, and infrastructural reforms. The expected date of entry into force of the new Code was 1 July 1999. Some provisions were already being implemented in practice, for example the abolition of in camera proceedings and alternative forms of dispute settlement.

12. With regard to disciplinary procedures in the police force, the Minister of Internal Relations had set up a Police Coordination Department to supervise and apply a uniform policy to the metropolitan, regional and local police forces. A database of allegations of police wrongdoing and ensuing disciplinary measures had been compiled.

13. Human rights instruction had been incorporated into the curriculum of training courses for the five police forces operating in the metropolitan area of Caracas and was a compulsory part of the courses followed by most municipal

and regional police forces. In police circulars, daily instructions and other documents, emphasis was laid on the need for absolute respect for the rights and dignity of citizens.

14. In response to complaints from international organizations, concerted efforts were being made to reduce violence in Venezuelan prisons, in particular by improving conditions and promoting the rehabilitation and social integration of offenders. Human rights were increasingly being incorporated into prison staff training programmes.

15. Although legal reforms alone would not solve all the problems highlighted by the Committee, a range of new measures would at least help reduce the incidence of torture. Significantly, the new Code of Criminal Procedure would render extrajudicial statements null and void (para. 27 of the report).

16. In the 1960s, it had been common for the military justice system to handle civil cases, mainly with a view to intimidating persons for political motives. Now that democracy had returned to the country and that the criminal procedure system was finally developing as it ought, the Government was keen to ensure that military justice did not overstep its competence. To that end, the Supreme Court had ruled that legal decisions should be left to the legal system. Civilians wishing to assert their right to be tried in a regular civilian court could have recourse to the newly promulgated remedy of amparo, which guaranteed them judicial protection (para. 6).

17. Regarding outstanding issues raised by members, a committee had been established under the office of the Presidency of the Republic to safeguard women's rights, targeting retrograde practices and revising discriminatory legislation. Furthermore, a special unit had been created in the police force to investigate cases of family violence and other problems affecting women.

18. As to the two cases raised by Mr. Bruni concerning Luiris Elena Acosta Flores and Alisson González Garcia, court decisions were still pending. In the latter case, the official concerned had been suspended from his duties the previous year and submitted to DNA tests. In both cases, the competent tribunals had been ordered to establish responsibility and the necessary criminal and disciplinary procedures were under way.

19. Eager to meet its international commitments, the country would be submitting its outstanding reports at the earliest opportunity. The Committee would also be kept abreast of the drafting of the new Constitution, which would contain express mention not only of international commitments, but also of the new status accorded to the Convention in domestic law.

20. Venezuela hoped to learn from the Committee's advice and experience and would be keen to receive information on mechanisms for dealing with torture cases and rehabilitating torture victims. In view of economic difficulties currently facing the country, assistance from friendly organizations in improving the system would be much appreciated.

21. The delegation would shortly be appearing before Congress, confident that the legislature would be receptive to change. The Government was determined to ensure that human rights did not become a dead letter and that the safeguards and mechanisms provided for were properly applied in practice.

22. The CHAIRMAN confirmed that the Committee would be delighted to assist Venezuela in implementing the Convention. The delegation's request for information would be forwarded to the secretariat.

23. Mr. GONZÁLEZ POBLETE (Country Rapporteur) requested the delegation to provide information on the relative status of Supreme Court decisions, including lists of sentences.

24. The delegation of Venezuela withdrew.

The public part of the meeting rose at 4.10 p.m.